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IN REPLY REFER TO:

1986.07.31

July 31, 1986

Ralph A. Hurvitz, Senior Counsel
Lockheed Missiles & Space Company, Inc.
1111 Lockheed Way
Sunnyvale, CA 94086

Re: Pre-emption of IWC Orders by NLRA

Dear Mr. Hurvitz:

Mr. Lloyd Aubry, State Labor Commissioner, has asked me to respond to your letter of June 30, 1986, regarding questions you pose concerning the requirements found in the Industrial Welfare Commission Orders that the employer is obligated to maintain uniforms if the employer requires uniforms.

It is my understanding of your letter that you feel that such provisions interfere with the collective bargaining process and, thus, are violative of the National Labor Relations Act. You seem to suggest that the Labor Commissioner should adopt a policy which, in effect, would state that the DLSE would not seek to enforce the provisions of the IWC Orders regarding maintenance of uniforms where there is a collective bargaining agreement in effect.

The California Supreme Court has already addressed this subject in the 1980 case of Industrial Welfare Commission v. Superior Court 27 Cal.3d 690 when, quoting the U.S. Supreme Court in Terminal Assn. v. Trainmen (1943) 318 U.S. 1, it stated:

> "The Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulation of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them."

There have been other attempts to prevent enforcement of IWC regulations based upon the same argument which you raise in your letter and the Labor Commissioner has successfully defended such actions. The IWC Orders provide nothing more than minimum requirements as to wages, hours and working conditions. The

parties to a collective bargaining agreement are free to negotiate more stringent provisions; but the right of the Labor Commissioner (or an employee) to enforce the provisions of the Orders is not pre-empted by the NLRA.

The term "maintenance" is defined in the dictionary and has an established meaning based upon the DLSE enforcement policies. I foresee no problem in establishing a meaning which a court would adopt.

I hope the above adequately answers the issues you raised in your letter of February 26, 1986, addressed to Chief Counsel Giannini. Please feel free to contact me if you have any further questions.

Yours truly,

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.
Senior Counsel

c.c. Lloyd W. Aubry, Jr.